

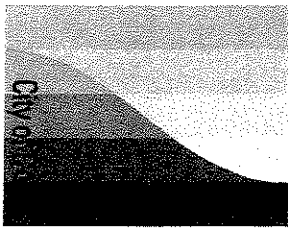
CITY CLERK
(712) 328-4616

AGENDA

**CITY COUNCIL STUDY SESSION
COUNCIL CHAMBERS
MONDAY, March 10, 2008
3:45 P.M.**

- A. Hearing: No Frills, 1817 West Broadway
Tobacco violation
- B. Review of Agenda
- C. ***Executive Session:***
Property acquisition





OFFICE OF:
LEGAL DEPARTMENT
(712) 328-4620

February 8, 2008

No Frills Supermarkets, Inc.
11163 Mill Valley Road
Omaha, NE 68154

RE: No Frills Supermarket
1817 West Broadway
Council Bluffs, IA 51501

The City of Council Bluffs has scheduled a hearing before the City Council at 3:45 p.m. on the 10th day of March, 2008, in the City Council Chambers, 2nd Floor, City Hall, 209 Pearl Street, Council Bluffs, Iowa. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the **mandatory** \$300.00 civil penalty prescribed by Iowa Code Section 453A.22(2)(a) for the violation of Iowa Code Section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to the office of the City Attorney, 209 Pearl Street, Council Bluffs, IA 51503, no later than ten (10) business days prior to the hearing date. With this Acknowledgment/Settlement Agreement, you must include a check in the amount of \$300.00, made out to the City of Council Bluffs, Iowa. This will satisfy the penalty for a first violation under Iowa Code Section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (712) 328-4620, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

Don Bauermeister
Asst. City Attorney

cc: City Clerk




IN RE:

No Frills Supermarket
1817 West Broadway
Council Bluffs, IA 51501

HEARING COMPLAINT

The City of Council Bluffs, Iowa, hereby makes the following complaint against the above-named permittee:

1. Iowa Code Section 453A.2(1) provides that a person shall not “sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.”
2. Iowa Code Section 453A.22(2)(a) provides that if a permit holder or employee of a permit holder has violated Iowa Code Section 453A.2(1), the permit holder shall be assessed a civil penalty of three hundred dollars (\$300.00) for a first violation of Iowa Code Section 453A.2(1).
3. On or about December 10, 2007, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the criminal citation is attached and incorporated herein.
4. Therefore, in accordance with Iowa law, the City of Council Bluffs requests the Council Bluffs City Council find a violation of the above-referenced sections of Iowa Code Chapter 453A and assess a civil penalty in the amount of three hundred dollars (\$300.00) against No Frills Supermarket, 1817 West Broadway, Council Bluffs, IA 51501.


Don Bauermeister, Asst. City Attorney
209 Pearl Street
Council Bluffs, IA 51503
(712) 328-4620

Council Bluffs Police Dept.

☒ State of IowaCounty of: Pottawattamie No.: 78City of: Council Bluffs07051674
CB 131854In the Court at 227 South 6th Street Council Bluffs, IA 51501vs: Graybill, Maggie Mae
Name Defendant Last First MiddleAddress 729 W. Washington Ave.
City Co. Bluffs State IA Zip 51503DL# 852223560 (Sec: 481-02-4675) State IADL Class 0 DL End. — DL Rest. — DL/State ID Viewed? Yes ☐ No ☒DOB 04/11/82 Race W Ethn. N Sex F Ht. — Wt. —
W/B/I/A/U H/N/UThe undersigned states that on or about 12/10/07 at 8:26 PM
defendant did unlawfully: Mo. Day Yr.Operate Motor Vehicle/Boat (describe) X/IACDL Req? Yes ☐ No ☐ Pass. End. Req? Yes ☐ No ☐ HazMat End. Req? Yes ☐ No ☐Reg# — State — Year — US DOT # —Upon a public highway at 1817 W. Broadway

Located in the county and state aforesaid and did then and there commit the following offense:

☐ Traffic ☐ Navigation ☐ Snowmobile/ATV ☐ Fish-Game ☐ Parks ☒ Tobacco☒ Sched. Violation/Fine \$ \$100.00 ☐ Road Work ZoneCriminal Surcharge \$ 32.00 ☐ Non-scheduled ViolationCo. Enf. Surcharge \$ — ☐ Court Appearance Required (805.10)Court Costs \$ 50.00 Reason:Total Fine/Costs \$ 182.00 ☐ Serious P.I. ☐ Fatal Accident☐ Civil Damage Assessment ☐ OtherViolation Employee Provided Tobacco To A MinorSpeed — in — Zone Sec. 453 20 IA CodeDATA CODE 524 Fed/Adm. Code — Local Ord. —Dated 12/10/07 [Signature] 655
Mo. Day Yr. Officer's Signature I.D. No.

Court Date: If you must appear in court or if you choose to appear to answer to a charge which does not require an appearance, report to the above named court on

01/02/08 at 9:00 ☒ AM ☐ PM
Mo. Day Yr.

NOTICE: Providing false information is a violation of Section 719.3 of the Code of Iowa and is punishable as an aggravated misdemeanor.

You hereby are given notice that within a reasonable time but no later than the date scheduled for your initial appearance a citation/complaint sworn under oath will be filed with the district court clerk of the county in which the citation was issued.

My signature below is not a plea of guilty, but acknowledges all of the following:

- I hereby swear and affirm that the information provided by me on this citation is true under penalty of providing false information.
- I promise to appear in said court at said time and place, or I will comply with the provision on the top of the reverse side of the citation.

The following applies to simple misdemeanors only:

- I hereby give my unsecured appearance bond in the amount of \$248.00 dollars and enter my written appearance. I agree that if I fail to appear in person or by counsel to defend against the offense charged in this citation, the court is authorized to enter a conviction and render judgment against me for the amount of my appearance bond in satisfaction of the penalty and surcharge plus court costs.

[Signature]
Signature of Defendant

CERTIFICATE

I, Ruth Godfrey, Clerk of the District Court of the State of Iowa, in and for Pottawattamie County, do hereby certify that this is a true and complete copy of the Original Instrument filed in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at my office in Council Bluffs, Iowa, this 10th day of Feb, 2008.

Ruth Godfrey
Clerk of the District Court
[Signature]

IN RE:

No Frills Supermarket
1817 West Broadway
Council Bluffs, IA 51501

**ACKNOWLEDGEMENT/SETTLEMENT
AGREEMENT**

ACKNOWLEDGEMENT/SETTLEMENT AGREEMENT

I/We hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I/We hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I/We hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I/We understand that this penalty will count as an official "First Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I/We have enclosed a check in the amount of \$300.00, made payable to the City of Council Bluffs, Iowa, to settle the above-referenced complaint.

DATED this _____ day of _____, 20____.

NOTE: This must be signed by an individual cigarette permittee or, in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this Acknowledgment/Settlement Agreement and waive your appearance at a hearing, this document (properly signed and dated), along with your \$300.00 check made payable to the City of Council Bluffs, Iowa, should be returned to:

City Attorney's Office
209 Pearl Street
Council Bluffs, IA 51503